

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTHONY C. ROWE,

Petitioner,

v.

JACK WAGNER,

Respondent.

CASE NO. 3:24-cv-05196-LK

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of United States Magistrate Judge Grady J. Leupold. Dkt. No. 5. The R&R recommends dismissing pro se Petitioner Anthony C. Rowe’s proposed petition for habeas corpus filed under 28 U.S.C. § 2254 without prejudice for lack of jurisdiction because Mr. Rowe attempts to raise a claim in his proposed petition that he could have raised in a prior habeas petition that was adjudicated on the merits. *Id.* at 8–9. Therefore, pursuant to 28 U.S.C. § 2244(b), the Rules Governing Section 2254 Cases in the United States District Courts, and Ninth Circuit Rule 22-3, Mr. Rowe was required to—but did not—first obtain leave from the Ninth Circuit Court of Appeals before filing the instant proposed petition. *Id.* at 6–8. Judge Leupold also recommends denying a certificate of

1 appealability and denying Mr. Rowe's in forma pauperis ("IFP") motion as moot. *Id.* at 8–9. Mr.
2 Rowe did not file any objections to the R&R.

3 The Court reviews findings and recommendations "*if objection is made*, but not otherwise."
4 *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) ("Neither the
5 Constitution nor the statute requires a district judge to review, de novo, findings and
6 recommendations that the parties themselves accept as correct."); *see also* 28 U.S.C. § 636(b)(1);
7 Fed. R. Civ. P. 72(b)(3).

8 Having reviewed the R&R and the remainder of the record, and in the absence of any
9 objections by Mr. Rowe, the Court hereby finds and ORDERS the following:

- 10 1. The Court ADOPTS the R&R, Dkt. No. 5.
- 11 2. Mr. Rowe's action is DISMISSED without prejudice and his IFP motion is
12 DENIED as moot.
- 13 3. A certificate of appealability is DENIED in this case.
- 14 4. The Clerk is directed to send copies of this Order to Mr. Rowe at his last known
15 address and to Judge Leupold.

16 Dated this 1st day of May, 2024.

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Lauren King
19 United States District Judge
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